IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1134 OF 2005

Shri Lakhu Rambhu Kamble .. Appellant
Versus
Smt. Vijaya Dattaram Nagap & Ors.. Respondents

Mr.Ashok J.Chougule for appellant
Mr.A.B.Vagyani for respondents 1 to 4.

CORAM : P.V.KAKADE, J.

DATE : 27TH OCTOBER, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Kolhapur dated 16.2.2005 whereby appeal was allowed, cross objections of the concerned parties were dismissed and judgment and decree passed in Regular Civil Suit No.576 of 2000 dated 31.12.2002 passed by the trial court was set aside and decree for specific performance was decreed in favour of the appellant-plaintiff.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for specific

performance of contract submitting that the sale deed executed by defendant no.1 in favour of defendant no.2 on 24.3.2000 be declared as illegal and not binding on him. The plaintiff claimed that the defendants be restrained from obstructing his possession over the suit property. The Plaintiff also claimed that defendant no.1 be directed to execute the sale deed in his favour as per agreement between them dated 25.2.1999 and in the alternative the plaintiff prayed for refund of amount of earnest money. The defendants contested the suit, inter alia, denying the allegations made by the plaintiff and submitted that the possession of the suit was already given to the defendant no.2 by defendant no.1 by sale deed dated 24.3.2000 and thus there was no question of specific performance of contract between the plaintiff and defendant no.1 dated 25.2.1999 and as such suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved the agreement between himself and defendant no.1 dated 25.2.1999 for consideration of Rs.30,000/= and defendant no.1 had received full consideration amount. It was further held that the plaintiff failed

to prove that he was in possession of the suit property by virtue of the said contract. It was further held that the plaintiff was not entitled for specific performance of the contract and suit came to be dismissed for the said relief but was decreed for alternative ground with decree for refund of earnest money. The appeal was carried to the District Court with cross objection filed by the concerned party. The lower appellate court after hearing both the parties came to the conclusion that the findings recorded by the learned trial court judge were erroneous and the plaintiff was entitled to the decree of specific performance and allowed the appeal. Hence, the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The agreement of sale Exh.93 executed by Respondent no.1 in favour of deceased Dattaram, i.e. predecessor in title of the plaintiff in acceptance of Rs.30,000/= is proved on record. It is further proved that permission or regrant of land by payment of occupancy price was obtained by Respondent no.1 on 15.10.1999 within a period of eight months. It is also

not in dispute that the plaintiff-appellant's predecessor Dattatraya had issued notice through advocate on 27.3.2000 calling upon the respondent no.1 to execute the sale deed. However, the respondent no.1 before issuance of the said notice on 24.3.2000 executed a sale deed of suit land in favour of respondent no.2. It is pertinent to note that though the respondent no.2 is said to have purchased the property from respondent no.1, still the evidence was clear enough to show that the Respondent no.2 has not claimed that his act of purchase of property as bonafide purchaser for value without notice, the pleadings are totally silent on this aspect and therefore, the respondent no.2 is not entitled to claim a protection under Clause (b) of Section 19 of the Specific Relief Act, 1963. I fully concur with the reasoning adopted by the lower appellate court on this aspect. It is also to be noted on perusal of the judgment of the lower appellate court, that it is rightly held on the basis of available evidence, that the plaintiff has succeeded in proving that he was ready and willing to perform his part of the contract and therefore, he was entitled to specific relief claimed for, especially when it was established that the respondent no.1 had committed breach of the contract

between the parties. It is needless to mention that the contract between the respondent no.1 and respondent no.2 and consequent acts thereafter are rendered illegal and not binding upon the appellant-plaintiff and hence the appeal is rightly allowed.

4. In other words, there is no reason why the reasoning adopted by the learned lower appellate court judge should be interfered with and as such the appeal has no merits and thus stands dismissed with no order as to costs.